Perniagaan Cerah Sdn Bhd & Ors v Messrs Sugumar & Co (sued as a firm) & Ors

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO S-02–2218 OF 2010
RAMLY ALI, ANANTHAM KASINATHER AND ABDUL AZIZ ABD RAHIM JJCA
13 DECEMBER 2012

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Civil Procedure — Appeal — Appellate interference — Whether findings of fact so unreasonable that no reasonable tribunal would have come to that conclusion — Whether findings of fact plainly wrong

D

Contract — Sale and purchase agreement — Sale of shares — Breach — Whether vendor wrongly terminated agreement — Measure of damages — Whether exemplary or aggravated damages available

E

Legal Profession — Duty of care — Negligence — Breach — Whether solicitor acting for company negligent in failing to ascertain real directors and shareholders of the company — Whether solicitor could rely on Forms 32A and 49 of the Companies Act 1965 certified by Registrar of Companies — Whether solicitor properly appointed

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Tort — Conspiracy — Conspiracy to defraud — Whether established — Company's land wrongfully sold by persons who were not directors or shareholders

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Sometime before 2001, the first appellant had applied for alienation of some state land ('the land'). While the approval of the authority was still pending, the previous directors and shareholders of the first appellant company, namely Mohd Yusof ('DW1') and Yanti, by an agreement dated 21 March 2001 sold their shares in the first appellant company to the second and third appellants ('the first agreement'). However, by a letter dated 2 October 2002, DW1 and Yanti terminated the first agreement alleging that the second and third appellants had failed to extend a loan of RM25,000 to DW1 and Yanti as stipulated in the first agreement. Subsequently, on 4 October 2002, DW1 and Yanti sold their shares in the first appellant to the second and third respondents and appointed both of them as directors of the first appellant. DW1 and Yanti also resigned their directorship in the first appellant. In mid-October 2002, the first respondent (Messrs Sugumar & Co) was appointed by the first appellant through the second and third respondents in relation to a sale and purchase

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agreement which was then executed on 15 November 2002 for the sale of the land by the first appellant to one LS Plantation ('the SPA'). The appellants claimed that the second and third respondents were not directors of the first appellant between the period of 4 April 2001–28 July 2003. This was certified by the registrar of companies ('the ROC') on 28 July 2003, confirming that the rightful shareholders of the first appellant were the second and third appellants. Hence, the appellants claimed that the first respondent by agreeing to act as the solicitors for the SPA, owed a duty of care towards the first appellant, which was breached by the first respondent when it failed to ascertain whether the second and third respondents were in fact directors of the first appellant at that time. The appellants further claimed that the respondents had conspired to defraud and had unlawfully interfered with the first appellant's business by purporting to sell the land without authority. The appellants claimed general damages, exemplary or aggravated damages against all the respondents. The High Court held that the first respondent was duly appointed as solicitors for the first appellant and in so acting, did not breach its duty of care to the first appellant in the sale of the land. The High Court also held that the respondents did not conspire to defraud the first appellant. However, the second and third respondents were held to have had unlawfully interfered with the first appellant's business and ordered them to pay RM75,000 damages to the appellants. The claim against the first respondent was dismissed. The High Court further held that the rightful shareholders and directors of the first appellant at the material times were the second and third appellants, not the second and third respondents. The appellants appealed against the High Court's decision.

Held, dismissing the appeal with costs of RM10,000:

(1) At the time of the appointment, the first respondent was shown copies of Form 49 duly certified by the Assistant Registrar of Companies, and the original copy of Form 32A, confirming that the directors and shareholders of the first appellant were the second and third respondents. These documents which were dated 4 October 2002 were never challenged by the appellants during trial. The certification by the ROC that the rightful shareholders of the first appellant were the second and third appellants, as relied on by the appellants only came on 28 July 2003, long after the first respondent had completed its works on behalf of the first appellant in relation to the SPA. Before 28 July 2003, there was no way the first respondent knew that the second and third respondents were not the directors and shareholders of the first appellant. At those material times, there was no reason to suspect that the copy of the Form 49 was not genuine. Therefore the first respondent was right in relying of the face value of the said Form 49, that both the second and third respondents were directors of the first appellant (see paras 16 & 20).

(2) The first respondent was duly appointed to act as solicitors for the first appellant and had not breached his duty of care to the first appellant in the related transaction. There could not be any conspiracy among the respondents to defraud the appellants. In respect of the sale transaction, the first respondent could not be said to have interfered with the business of the first appellant (see paras 21–23).

(3) The rightful shareholders of the first appellant at the material times depended on whether the letter of termination dated 2 October 2012 issued by DW1 and Yanti to the second and third appellants in respect of the first agreement was valid or not. The second and third appellants had complied with the said agreement. There was no breach on their part. Therefore the second and third respondent had no right to terminate the said agreement and the rightful shareholders of the first appellant by virtue of the said agreement were the second and third appellants. By terminating the said agreement and later having sold the said land to LS Plantation, the second and third respondents had unlawfully interfered with the first appellant's business in relation to the said land (see paras 25).

(4) In relation to the appellants' claim for general damages and exemplary or aggravated damages of RM30,000,000, the appellants had not proved their claim. Hence, an amount of RM75,000 was a reasonable sum to be paid by the second and third respondents to the appellant (see paras 26–27).

(5) An appellate court would only interfere with findings of fact made by the learned High Court judge if those findings are so unreasonable that no reasonable tribunal would have come to that conclusion or that his findings of fact are plainly wrong. In the present case, all the findings of the learned High Court judge made after full trial could not be said to be so unreasonable that no reasonable tribunal would have come to that conclusion or that his findings of fact were plainly wrong as to warrant appellate interference (see para 29).

[Bahasa Malaysia summary

Sebelum 2001, perayu pertama telah memohon untuk pemberi milikan atas beberapa tanah negeri ('tanah'). Walaupun kelulusan pihak berkuasa masih belum selesai, para pengarah sebelumnya dan pemegang saham syarikat perayu pertama, iaitu Mohd Yusof ('DW1') dan Yanti, melalui perjanjian bertarikh 21 Mac 2001 menjual saham mereka dalam syarikat perayu pertama kepada perayu kedua dan ketiga ('perjanjian pertama'). Walau bagaimanapun, melalui surat bertarikh 2 Oktober 2002, DW1 dan Yanti menamatkan perjanjian pertama mendakwa bahawa perayu kedua dan ketiga telah gagal untuk melanjutkan pinjaman sebanyak RM25,000 untuk DW1 dan Yanti seperti yang ditetapkan dalam perjanjian pertama. Kemudiannya, pada 4 Oktober

2002, DW1 dan Yanti menjual saham mereka di dalam perayu pertama kepada responden kedua dan ketiga dan melantik kedua-dua mereka sebagai pengarah perayu pertama. DW1 dan Yanti juga meletak jawatan mereka sebagai pengarah di dalam perayu pertama. Pada pertengahan Oktober 2002, responden pertama (Tetuan Sugumar & Co) telah dilantik oleh perayu pertama melalui responden kedua dan ketiga berhubung dengan suatu perjanjian jual beli yang kemudiannya dilaksanakan pada 15 November 2002 untuk penjualan tanah oleh perayu pertama kepada LS Plantation ('PJB'). Perayu mendakwa bahawa responden kedua dan ketiga tidak pernah menjadi pengarah perayu pertama antara tempoh 4 April 2001–28 Julai 2003. Ini telah disahkan oleh pendaftar syarikat ('ROC') pada 28 Julai 2003, yang mengesahkan bahawa pemegang saham yang sah perayu pertama ialah perayu kedua dan ketiga. Oleh itu, perayu-perayu mendakwa responden pertama yang bersetuju untuk bertindak sebagai peguam untuk PJB, berhutang kewajipan berjaga-jaga terhadap perayu pertama, yang telah dilanggar oleh responden pertama apabila ia gagal untuk memastikan sama ada responden kedua dan ketiga adalah pengarah perayu pertama pada masa itu. Perayu mendakwa bahawa responden telah berkomplot untuk menipu dan telah menyalahi undang-undang mengganggu perniagaan perayu pertama dengan menjual tanah itu tanpa kuasa. Perayu mendakwa ganti rugi am, ganti rugi teladan atau teruk terhadap semua responden. Mahkamah Tinggi memutuskan bahawa responden pertama telah dilantik dengan sewajarnya sebagai peguam perayu pertama dan dalam bertindak sedemikian, tidak melanggar kewajipan penjagaan kepada perayu pertama dalam penjualan tanah itu. Mahkamah Tinggi juga memutuskan bahawa responden tidak berkomplot untuk menipu perayu pertama. Walau bagaimanapun, responden kedua dan ketiga diputuskan telah menyalahi undang-undang telah mengganggu perniagaan perayu pertama dan memerintahkan mereka untuk membayar ganti rugi RM75,000 kepada perayu. Tuntutan terhadap responden pertama telah ditolak. Mahkamah Tinggi selanjutnya memutuskan bahawa pemegang saham dan pengarah yang sah perayu pertama pada masa yang material merupakan perayu kedua dan ketiga, bukan responden kedua dan ketiga. Perayu merayu terhadap keputusan Mahkamah Tinggi itu.

Diputuskan, menolak rayuan dengan kos sebanyak RM10,000:

(1) Pada masa pelantikan itu, responden pertama telah ditunjukkan salinan Borang 49 yang disahkan oleh Penolong Pendaftar Syarikat, dan salinan asal Borang 32A, mengesahkan bahawa para pengarah dan pemegang saham perayu pertama ialah responden kedua dan ketiga. Dokumen-dokumen yang bertarikh 4 Oktober 2002 tidak pernah dicabar oleh perayu-perayu semasa perbicaraan. Pensijilan oleh ROC bahawa pemegang saham perayu pertama yang berhak ialah perayu kedua dan ketiga, seperti yang dipercayai oleh perayu-perayu hanya timbul pada 28 Julai 2003, lama selepas responden pertama telah

menyelesaikan kerjanya bagi pihak perayu pertama berhubung kepada PJB. Sebelum 28 Julai 2003, tidak ada cara responden pertama mengetahui bahawa responden kedua dan ketiga bukanlah pengarah dan pemegang saham perayu pertama. Pada masa yang material tersebut, tidak ada sebab untuk mensyaki bahawa salinan Borang 49 tidak tulen. Oleh itu responden pertama adalah betul dengan bergantung pada zahir Borang 49 itu, bahawa kedua-dua responden kedua dan ketiga adalah pengarah perayu pertama (lihat perenggan 16 & 20).

(2) Responden pertama telah dilantik dengan sewajarnya untuk bertindak sebagai peguam bagi perayu pertama dan tidak melanggar kewajipan berjaga-jaga kepada perayu pertama dalam urus niaga yang berkaitan. Tidak terdapat apa-apa yang boleh menjadi apa-apa konspirasi di kalangan responden untuk menipu perayu-perayu. Berkenaan dengan transaksi penjualan, responden pertama tidak boleh dikatakan telah mengganggu urusan perayu pertama (lihat perenggan 21–23).

(3) Pemegang saham sah perayu pertama pada masa yang material bergantung kepada sama ada surat penamatan bertarikh 2 Oktober 2012 yang dikeluarkan oleh DW1 dan Yanti kepada perayu kedua dan ketiga berkenaan dengan perjanjian yang pertama adalah sah atau tidak. Perayu kedua dan ketiga telah mematuhi perjanjian tersebut. Tidak ada pelanggaran di pihak mereka. Oleh itu responden kedua dan ketiga tidak mempunyai hak untuk menamatkan perjanjian tersebut dan pemegang saham perayu pertama yang sah menurut kuasa perjanjian tersebut adalah perayu kedua dan ketiga. Dengan menamatkan perjanjian tersebut dan kemudian setelah menjual tanah itu kepada LS Plantation, responden kedua dan ketiga telah secara salah mengganggu perniagaan perayu pertama berhubung dengan tanah tersebut (lihat perenggan 25).

(4) Berhubung dengan tuntutan perayu-perayu untuk ganti rugi am dan ganti rugi teladan atau teruk daripada RM30,000,000, perayu-perayu telah tidak membuktikan tuntutan mereka. Oleh itu, jumlah sebanyak RM75,000 adalah jumlah wang yang munasabah yang hendaklah dibayar oleh responden kedua dan ketiga kepada perayu (lihat perenggan 26–27).

(5) Mahkamah Rayuan hanya akan mengganggu dapatan fakta yang dibuat oleh yang terpelajar hakim Mahkamah Tinggi yang jika penemuan tersebut begitu tidak munasabah bahawa tiada tribunal munasabah akan membuat kesimpulan bahawa atau yang penemuannya fakta adalah jelas salah. Dalam kes ini, semua dapatan hakim yang bijaksana Mahkamah

A Tinggi yang dibuat selepas perbicaraan penuh tidak boleh dikatakan begitu tidak munasabah bahawa tiada tribunal munasabah akan membuat kesimpulan bahawa atau yang penemuan faktanya adalah jelas salah bagi membenarkan campur tangan rayuan (lihat perenggan 29).]

B **Notes**

For cases on conspiracy to defraud, see 12(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 83–86.

For cases on negligence, see 9 *Malla's Digest* (4th Ed, 2012 Reissue) paras 1536–1548.

C **Legislation referred to**

Companies Act 1965 ss 7(2), 7(A), 11(5), Forms 32A, 49

Appeal from: Suit No K22–152 of 2005 (High Court, Kota Kinabalu)

D *Yunof Maringking (Maringking & Co) for the appellants.*
Sugumar (Sugumar & Co) for the respondents.

Ramly Ali JCA (delivering judgment of the court):

E **[1]** This is an appeal by the appellants (the plaintiffs at the court below) against the decision of the learned High Court judge on 30 June 2010 declining to award general damages to the appellants to be assessed and dismissing the appellants' claim against the first respondent with costs.

F FACTUAL BACKGROUND

[2] Sometimes before 2001, the first appellant, Perniagaan Cerah Sdn Bhd applied for alienation of state land under PT 98110430.

G **[3]** In the meantime, while the approval of the authority was still pending, the previous directors and shareholders of the first appellant company, namely Mohd Yusof ('DW1') and Yanti, by an agreement dated 21 March 2001 sold their one share each in the first appellant company to the second and third
H appellants respectively for a total consideration of RM1,012,500 which was calculated at RM610 per acre of the state land applied by the first appellant company ('the first agreement').

[4] On 2 October 2002 by a letter of the same date, both DW1 and Yanti
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terminated the said first agreement on the alleged ground that the second and third appellants had failed to extend a loan of RM25,000 to DW1 and Yanti during the 12 months period from the date of the agreement, as stipulated under clause 2(1) of the said first agreement.

[5] Two days later (ie on 4 October 2002) both DW1 and Yanti sold their one share each in the first appellant company to the second and third respondents, Ibrahim Mahmud and Abidin bin Hamsah @ Yusup and appointed both of them as directors of the first appellant company. On the same day, both DW1 and Yanti also resigned their directorship in the first appellant company.

[6] In mid-October 2002, the first respondent, ('Messrs Sugumar & Co') was appointed by the first appellant company through the second and third respondents to pursue a draft sale and purchase agreement which was executed on 15 November 2002 by the first appellant company as the vendor and one LS Plantation as the purchaser ('the second agreement'). LS Plantation was also given a power of attorney by the first appellant company to apply for approval to survey the approved land which by then, had been alienated to the first appellant company.

[7] As against the first respondent, the appellants claimed that the first respondent by agreeing to act as the solicitors for the first appellant company to peruse the draft sale and purchase agreement dated 15 November 2002 with LS Plantation, owed a duty of care towards the first appellant company to take reasonable steps to ensure that the first appellant company as its client would not suffer as a result of the instruction given by the second and third respondents. The appellants further claimed that there was a breach of that duty of care by the first respondent when it failed to enquire or ascertain that the second and third respondents were in fact directors of the first appellant company when they instructed the first respondent to peruse the draft sale and purchase agreement which was prepared by Messrs Fernandez & Co for the sale of its approved land to LS Plantation.

[8] As against the second and third respondents, the appellants claimed that both the second and third respondents had purportedly instructed, the first respondent to act as the solicitors for the first appellant company in the preparation and execution of the agreement dated 15 November 2002 with LS Plantation when they have no authority to do so, as they were not duly appointed as directors of the first appellant company and therefore had no locus standi to give any instruction to the first respondent on behalf of the first appellant company.

[9] In their suit against all the respondents at the High Court, the appellants claimed that all the respondents had conspired to defraud and unlawfully interfered with the first appellant company's business by purporting to sell the approved land without authority. The appellants therefore claimed for general damages, exemplary or aggravated damages against all the respondents.

AT THE HIGH COURT

[10] After full trial, the learned High Court judge decided the case on the following issues, namely:

(a) whether in the circumstances of the case the first respondent owed a duty of care to the first appellant company in the sale of the approved land to LS Plantation;

(b) whether the first, second and third respondents conspired to defraud the first appellant company or alternatively unlawfully interfered with the running of the business of the first appellant company in respect of the sale transaction of the approved land with LS Plantation; and

(c) who are the rightful shareholders of the first appellant company: the second and third appellants or the second and third respondents?

[11] On the first issue, the learned High Court judge held that, in the circumstances of the case, the first respondent, was duly appointed as the solicitors acting on behalf of the first appellant company and in so acting, did not breach its duty of care to the first appellant company in the sale of the approved land to LS Plantation.

[12] On the second issue, the learned High Court judge ruled that the first, second and third respondents did not conspire to defraud the first appellant company in the sale transaction of the said land. However, the learned High Court judge ruled that the second and third respondents had unlawfully interfered with the first appellant company's business and awarded them to pay RM75,000 damages with statutory interest at the rate of 8%pa from the date of judgment and costs to the appellants. The claim against the first respondent, was dismissed with costs.

[13] On the third issue, the learned High Court judge held that the rightful shareholders and directors of the first appellant company at the material times were the second and third appellants, not the second and third respondents.

[14] Dissatisfied with the above decision, the appellants filed their notices of appeal to the Court of Appeal.

AT THE COURT OF APPEAL

[15] At the Court of Appeal, learned counsel for the appellants in his submissions raised the following issues, namely:

(a) that the learned High Court judge erred or misdirected himself in ruling that the first respondent was duly appointed to act as solicitors for the first appellant company through the second and third respondents when at all material times the shareholders and directors of the first appellant company were the second and third appellants, and both the first and third respondents had no authority to appoint the first respondent as solicitors;

(b) that the learned High Court judge erred or misdirected himself in ruling that the first respondent did not owe a duty of care to the first appellant company to enquire and/or as certain that the second and third respondents were directors of the first appellant company when they instructed the first respondent to peruse the draft sale and purchase agreement dated 15 November 2002 prepared by Messrs Fernandez & Co for the sale of the approved land to LS Plantation; and

(c) that the learned High Court judge failed to consider and/or appreciate properly or at all whether the first, second and third respondents conspired to defraud and/or to interfere with the first appellant company's business by purporting to sell the said approved land without authority of the rightful owners or shareholders of the first appellant company.

[16] The work which the first respondent was retained to do was to peruse the draft sale and purchase agreement relating to the sale of the approved land to LS Plantation. The said draft was prepared by a law firm of Messrs Fernandez & Co. It is not disputed that the first respondent was appointed by the first appellant company through the second and third respondents and the appointment was made sometime in mid-October 2002. At the time of the appointment, the first respondent was shown copies of Form 49 duly certified by the assistant registrar of companies, and the original copy of Form 32A, confirming that the directors and shareholders of the first appellant company at the material times were the second and third respondents. These documents which were dated 4 October 2002 were never challenged by the appellants during trial.

[17] The copy of Form 49 in question, once certified and signed by an assistant registrar of companies 'shall in any proceedings be admissible in evidence as of equal validity with the original document'. This is clearly provided for under s 11(5) of the Companies Act 1965. The certified copy of the said Form 49 signed by an assistant registrar shall be as valid and effectual

as if was signed by the registrar (see s 7(2) of the Companies Act 1965); and as clearly provided under s 7(A) of the same Act, 'all courts judges and persons acting judicially shall take judicial notice of the seal and signature of the Registrar or Assistant Registrar'.

[18] The said copy of Forms 49 and 32A were on their face value proper and valid. On this point, we are in agreement with the learned High Court judge that 'to require a solicitor to investigate the genuineness of those documents where there is no reason to suspect would put an unreasonable burden on the legal profession'.

[19] The appellants claimed that both the second and third respondents were not directors of the first appellant company between the period of 4 April 2001–28 July 2003 based on the information filed by the first appellant company with the registrar of companies. This was certified by the registrar of companies on 28 July 2003, confirming that the rightful shareholders of the first appellant company were the second and third appellants.

[20] It must be noted that the material times when the first respondent perused the agreement and later when the agreement was executed by the parties was before the date 15 November 2002. At that material times, the most recent and current certified copy of Form 49 available and Forms 32A indicated that the directors and shareholders of the first appellant company were the second and third respondents, not the second and third appellants. The certification by the registrar of companies that the rightful shareholders of the first appellant company were the second and third appellants, as relied on by the appellants only came on 28 July 2003, long after the first respondent had completed its works on behalf of the first appellant company in relation to the perusal and execution of the agreement dated 15 November 2002 between the first appellant company and LS Plantation regarding the sale of the approved land in question. Before that date (28 July 2003) there was no way the first respondent as solicitors acting on behalf of the first appellant company knew that the second and third respondents were not the directors and shareholders of the first appellant company. At that material times, there was no reason to suspect that the copy of the Form 49 was not genuine. Therefore the first respondent was right in relying of the face value of the said Form 49, that both the second and third respondents were directors of the first appellant company. In the circumstances of the case, there was no reason for the first respondent to refuse appointment to act as solicitors for the first appellant company at that particular time as the appointment was made through both the second and third respondents as directors of the first appellant company.

[21] Therefore the learned High Court judge was correct in holding that the first respondent was duly appointed to act as solicitors for the first appellant company and had not breached his duty of care to the first appellant company in the related transaction. We accordingly affirm the said finding.

[22] On the issue of conspiracy to defraud, the learned High Court judge ruled that in the circumstances of the case and based on the documentary evidence adduced, particularly the copy of Form 49 duly certified and signed by an assistant registrar of companies and two original Form 32A for the transfer of the shareholding in the first appellant company to the second and third respondents, there could not be any conspiracy among the three respondents to defraud the appellants. Furthermore the sale and purchase agreement in question was not drafted by the first respondent, but by Messrs Fernandez & Co, solicitors for LS Plantation. Again, we agree with this finding by the learned High Court judge.

[23] On the issue of unlawful interfere with the running of the business of the first appellant company in respect of the sale transaction of the approved land with LS Plantation, the learned High Court judge, made a correct finding that in the circumstances of the case the first respondent could not be said to interfere with the said business of the first appellant company. Accordingly the learned judge was right when His Lordship concluded that the appellants had failed to establish their claim against the first respondent and therefore the claim against the first respondent was correctly dismissed with costs.

[24] As against the second and third respondents the learned High Court judge went on to determine a preliminary and core issue: who were the rightful shareholders of the first appellant company at the material times — the second and third appellants or the second and third respondents?

[25] The learned High Court judge ruled that the rightful shareholders of the first appellant company at the material times depends on whether the letter of termination dated 2 October 2012 issued by DW1 and Yanti to the second and third appellants in respect of the earlier agreement dated 21 Mac 2001 was valid or not. In that respect, the learned High Court judge ruled that based in the evidence adduced during trial, the second and third appellants had complied with the said agreement. There was no breach on their part. Therefore the learned High Court judge found that the second and third respondents had no right to terminate the said agreement and the rightful shareholders of the first appellant company by virtue of the said agreement were the second and third appellants. By terminating the said agreement and

later having sold the said approved land to LS Plantation wide another sale and purchase agreement dated 15 November 2002, the learned High Court judge made a finding that both the second and third respondents had unlawfully interfered with the first appellant company's business in relation to the said approved land. Again, in the circumstances of the case and based on the evidence available we agree with the finding of the learned High Court judge on this issue.

[26] As for damages against the second and third respondents, the appellants argued that the learned High Court judge erred in law and in fact by declining to award general damages and exemplary or aggravated damages against them to be assessed based on development potential of the said land which they had unlawfully sold to LS Plantation. The appellants claimed a sum of RM30,000,000 for all the damages above.

[27] The learned High Court judge however found that the appellants had not proved their claim and disallowed the same; however the learned High Court judge accepted the amount of RM75,000 as a reasonable sum to be paid by the second and third respondents to the appellant.

[28] We have scrutinised the notes of evidence and all the documents tendered, and we are in agreement with the learned High Court judge that the appellants had failed to prove their claim of RM30,000,000. We find no reason to disturb the said finding. We also agree with the order of RM75,000 on awarded by the learned High Court judge against both the second and third respondents.

CONCLUSION

[29] It is settled law that an appellate court would only interfere with findings of fact made by the learned High Court judge if those findings are so unreasonable that no reasonable tribunal would have come to that conclusion or that his findings of fact are plainly wrong. In the present case, we are satisfied that all the findings of the learned High Court judge made after full trial cannot be said to be so unreasonable that no reasonable tribunal would have come to that conclusion or that his findings of fact are plainly wrong as to warrant appellate interference. We affirm the decision of the learned High Court judge.

[30] Accordingly, we dismiss the appeal with costs of RM10,000 to be paid by the appellants to the respondents and the deposit be refunded to the appellants.

Appeal dismissed with costs of RM10,000.

Reported by Kanesh Sundrum